PRIVY COUNCIL REPORT

Abdul Rahim Rajudin v Law Society of Singapore

PRIVY COUNCIL (ON APPEAL FROM SINGAPORE) — PRIVY COUNCIL APPEAL NO 22 OF 1989
LORD BRIDGE OF HARWICH, LORD BRANDON OF OAKBROOK, LORD ACKNER, LORD GOFF OF CHIEVELEY AND LORD LOWRY
21 JANUARY 1991

Legal Profession — Finder's fee or commission payable to solicitor — Whether there was pressure to pay commission — Whether bill rendered excessive — Whether conduct grossly improper — Disciplinary Committee's findings — Whether High Court conclusion proper — Solicitor's Remuneration Order 1974, r 14

The appellant was suspended from practice as an advocate and solicitor for a period of two months by an order of the High Court of Singapore. He was practising as a sole practitioner acting for one Peter Chaw ('PC') in relation to a purchase of certain property. By agreement of 4 February 1980, PC agreed to purchase the property for $667,653 without vacant possession. PC then asked the appellant to find him a buyer and through one Roland Mah ('RM'), introduced Philip Yap ('PY') to PC. After negotiations, a price of $2,241,406.50 was agreed for the property with vacant possession.

By a separate document ('the note') signed by PC, he agreed to pay RM a commission of 50 cents per sq ft, and the appellant through RM had asked for a commission of 25 cents per sq ft which was recorded in an endorsement on the note, and RM agreed to pay out of his share. In April 1980, the appellant learned that PC had previously agreed to sell the property to another purchaser. The appellant resolved the matter for PC including a recession of the agreement on payment of $273,036.63. In June 1980, PC asked the appellant to write to PY to demand further payment on account of the purchase price payable under the sale agreement. PC then entered into an agreement with the appellant ('commission agreement') whereby he agreed to pay the appellant $119,223.75 for the services rendered by the appellant in securing a buyer for PC. This was to be inclusive of the appellant's costs and disbursements from 4 October 1979 to 25 June 1980.

Following disputes between PC and PY in relation to the sale, the appellant was unable to act for either of them. PY then issued a vendor and purchaser summons. The appellant then assisted PC on certain factual matters. In April 1981, the appellant submitted a bill for $150,000 which included the sum of $119,223.75 payable under the commission agreement. The appellant stated that the sum included the costs and disbursements for assisting in the vendor and purchaser summons and the sum of $69,000 was commission or finder's fee. PC did not pay the bill and the appellant commenced proceedings. PC then commenced proceedings to tax the bill. A complaint was then lodged with the Law Society.

The Disciplinary Committee of the Law Society investigated the matter and concluded that the charges against the appellant were proved beyond reasonable doubt to the following extent:

(a) the commission or 'finder's fee' in the note, the commission agreement, the conversion of the commission under the commission agreement to part costs and disbursements and part commission were all unconscionable and overcharges warranting disciplinary action.
(b) the bill rendered by the appellant was an excessive bill in respect of the commission of approximately $69,000 admitted by the appellant to be included therein; and
(c) the bill rendered by the appellant was an excessive bill in respect of the sum of $30,000 for work done after June 1980.

There were three complaints before the High Court:

(1) That he took advantage of PC in demanding unconscionable commissions for putting through the transactions relating to the property.
(2) That he committed a breach of r 14 of the Solicitors Remuneration Order 1974.
(3) That he rendered an excessive bill for $150,000.

The High Court was of the view that the second complaint on r 14 had no application and as to the third complaint, they held that though the bill was excessive and submission of the bill constituted improper conduct, the conduct was not grossly improper. However, they upheld the first complaint and imposed a penalty of suspension from practice for two months. [See [1981] 1 MLJ 289.] On appeal, counsel for the appellant criticized the reasoning of the High Court as the conclusion was based on verbatim extracts from the record of proceedings before the Disciplinary Committee upon which they had made their findings. The High Court conclusion was therefore beyond their powers and was wrong.

Held, dismissing the appeal:

(1) From the record of PC's evidence quoted by the High Court, he was recorded as having stated that the appellant demanded a commission of $1.25 per sq ft as a condition of his writing to PY, and further, PC urgently required the money to pay American Express. It is plain that the High Court read the Disciplinary Committee's comments, coupled with its conclusion that the commission charged under the commission agreement was unconscionable, as a finding that PC had been under pressure when signing the commission agreement. The High Court was entitled to reach this conclusion because it was an irresistible inference from the material before them.

(2) It is clear that this head of complaint was within the terms of the formal complaint laid before the Disciplinary Committee.

Michael Burke-Gaffney QC (*B Mohan Singh* with him) for the appellant.

Robert Reid QC (*Bernard Doray* with him) for the respondents.

Cur Adv Vult

Lord Goff of Chieveley (delivering the judgment of the court): There is before their Lordships an appeal by Abdul Rahim Rajudin from an order of the High Court of Singapore whereby it was ordered, pursuant to s 80 of the Legal Profession Act (Cap 161, 1985 Ed) ('the Act'), that he should be suspended from practice as an advocate and solicitor for a period of two months, and that he should pay to the respondent, the Law Society of Singapore, the costs of and incidental to the proceedings in the High Court and of proceedings before the Disciplinary Committee of the Law Society.

The facts of the matter are, in brief, as follows. The appellant, who practised as a sole practitioner, acted for Peter Chaw Chuan Choon ('Peter Chaw') in relation to the purchase by him of certain property. By an agreement executed on or about 4 February 1980, Peter Chaw agreed to purchase the property for $667,653 ($7 per sq ft) without vacant possession. Peter Chaw asked the appellant to find him a purchaser for the property; and the appellant, through Roland Mah, introduced Philip Yap Pui Long ('Philip Yap') to Peter Chaw. On 4 March 1980, following negotiations at the appellant's office, a price was agreed between Peter Chaw and Philip Yap of $2,241,406.50 ($23.50 per sq ft); on the following day an agreement for the sale of the property by Peter Chaw to Philip Yap, at that price and with vacant possession, was signed by the parties. Completion was to take place on 30 September 1980. By a separate document ('the note') signed by Peter Chaw, he agreed to pay Roland Mah a commission at the rate of 50 cents per sq ft of the property. The appellant through Roland Mah had asked for commission at the rate of 25 cents per sq ft, viz $23,844.75; and, as was recorded in an endorsement on the note, Roland Mah agreed to pay the appellant a share of 25 cents per sq ft out of the commission he was to receive.

In the following month, April 1980, the appellant learned that Peter Chaw had previously agreed to sell the property to another purchaser for $1,335,306 ($14 per sq ft), subject to existing tenancies. The appellant resolved that matter for Peter Chaw on terms which included the rescission of the previous sale agreement on payment to that purchaser of $273,036.63. However, at the end of June 1980, Peter Chaw again asked for the assistance of the appellant. He needed the services of the appellant to write on his behalf to Philip Yap demanding a further payment on account of the purchase price payable under the sale agreement for the property. Peter Chaw then entered into an agreement with the appellant ('the commission agreement') whereby he agreed to pay to the appellant $119,223.75 ($1.25 per sq ft) for the services rendered by the appellant in securing a buyer for Peter Chaw ready to purchase the property at a price of $23.50 per sq ft. It was agreed shortly thereafter that the sum of $119,223.75 was inclusive of the appellant's costs and disbursements from 4 October 1979 to 25 June 1980.

Hitherto, the appellant had acted for both Peter Chaw and Philip Yap in relation to the sale of the property, but, following disputes between Peter Chaw and Philip Yap, the appellant was no longer able to act for both parties and Peter Chaw instructed new solicitors, Kirpal Singh & Co. In August 1980, Philip Yap issued a vendor and purchaser summons against Peter Chaw concerning the sale agreement. In connection with the summons, the appellant rendered assistance to Peter Chaw on certain factual matters.

On 10 April 1981 the appellant submitted to Peter Chaw a bill of costs ('the bill') for $150,000 for professional charges in relation to the property. The sum of $150,000 claimed under the bill included the sum of $119,223.75 payable under the commission agreement. The appellant later stated that the sum of $150,000 included about $50,000 costs and disbursements (of which $30,000 was said to be in respect of 50 to 100 hours work done assisting Peter Chaw on matters of fact in relation to the vendor and purchaser summons), and a sum of $69,000 said to constitute commission or finder's fee. Peter Chaw did not pay the bill. On 26 April 1982, the appellant commenced proceedings against Peter Chaw for the sum of $150,000. On 5 August, Peter Chaw commenced proceedings for taxation of the bill.

Thereafter, Peter Chaw made a complaint against the appellant to the Law Society. A Disciplinary Committee of the Law Society was appointed to investigate the complaint. The Committee reported on 26 April 1984. It concluded that the charges against the appellant were proved beyond reasonable doubt to the following extent:

(a) the commission or 'finder's fee' in the commission note, the commission agreement, the conversion of the commission under the commission agreement to part costs and disbursements and part commission were all unconscionable and overcharges warranting disciplinary action;

(b) the bill rendered by the appellant was an excessive bill in respect of the commission of approximately $69,000 admitted by the appellant to be included therein; and

(c) the bill rendered by the appellant was an excessive bill in respect of the sum of $30,000 for work done after June 1980.

The Committee formed the view that this would amount to grossly improper conduct on the part of the appellant in the discharge of his professional duty within the meaning of s 84(2)(b) of the Act and to a contravention of the provisions of sch VI of the Solicitors Remuneration Order 1974 within the meaning of s 84(2)(j) of the Act, and determined that cause of sufficient gravity for disciplinary action existed under those sections. Accordingly, pursuant to s 91 of the Act, the Law Society applied to the High Court, under s 95(1) of the Act, for an order that the appellant be called upon to show cause why he should not be dealt with under s 80 of the Act in such manner as the High Court should deem fit. Under s 80, advocates and solicitors are liable on due cause shown to be struck off the roll or to be suspended from practice for a period of not exceeding two years or to be censured. Such due cause may be shown by proof that an advocate and solicitor has (inter alia) been guilty

of grossly improper conduct in the discharge of his professional duty.

The matter then came before the High Court (Wee Chong Jin CJ, Sinnathuray and Thean JJ). [See [1989] 1 MLJ 289.] They concluded on analysis, that there were three complaints against the appellant:

(a) that he took advantage of Peter Chaw in demanding unconscionable commissions for putting through the transactions relating to the property;
(b) that he committed a breach of r 14 of the Solicitors' Remuneration Order 1974; and
(c) that he rendered an excessive bill for $150,000.

As to the second of these complaints, they held that r 14 had no application; and as to the third they held that, though the bill was excessive and submission of the bill constituted improper conduct, the conduct in question was not grossly improper. They further rejected the determination by the Committee that there had been a contravention by the appellant of sch VI of the Order of 1974, because there had been no complaint or charge against the appellant alleging contravention of sch VI. However, they upheld the first of the three complaints, and held that the appellant's conduct so complained of amounted to grossly improper conduct in the discharge of his professional duty. For this, they imposed the penalty of suspension from practice for two months, and made the order of costs against the appellant already referred to. It is against this order that the appellant now appeals.

It follows that, in the present appeal, the only complaint with which their Lordships are concerned is the first of the three complaints listed by the High Court, viz that the appellant took advantage of Peter Chaw in demanding unconscionable commissions.

Their Lordships turn therefore to the reasoning of the High Court with regard to this aspect of the case, which related to the commission agreement. Their reasoning was as follows:

(a) There was evidence, which the Committee accepted, that the appellant had asked for commission at the rate of $1.25 per sq ft at an earlier date on about 4 March 1980.
(b) The Committee accepted the evidence of Peter Chaw that he had no choice but to sign the commission agreement, when requested to do so by the appellant, as he urgently needed the appellant's assistance towards the end of June 1980. In the opinion of the High Court, the Committee was justified in accepting the evidence of Peter Chaw on this point. The evidence showed that Peter Chaw was at the material time in need of help, because American Express (on whose petition Peter Chaw was later adjudicated bankrupt) was pressing for payment. Peter Chaw needed the appellant to continue acting for him, and did not have much of a free choice in signing the commission agreement, which he was under some pressure to sign.
(c) The Committee concluded that the commission payable under the commission agreement was grossly excessive and unconscionable. The High Court agreed with that conclusion. They said:

> In our opinion, the irresistible inference from the facts was that Peter Chaw was never free (in agreeing to and signing the commission agreement) from the influence of the [appellant] acting as his solicitor. The [appellant], we find, abused this trust and confidence by obtaining for himself a hefty commission.

They re-examined the question whether the commission was grossly excessive; they concluded that it was, and stated that the relevant comparisons afforded the clearest indication that the appellant had abused the solicitor and client relationship to promote his own interests.

(d) The High Court expressed their general conclusion on this aspect of the case in these words:

> We find the commission agreement (which includes the amount in the note) was unfairly made in that the [appellant] took advantage of Peter Chaw and that the terms of the agreement are unreasonable in that they are grossly excessive and indicate in a telling manner the [appellant's] abuse of his fiduciary position. Such conduct on the part of the [appellant] was grossly improper in the discharge of his professional duty.

Before their Lordships, Mr Burke-Gaffney (who said everything that could be said on behalf of the appellant) criticized the reasoning of the High Court. His principal criticism was that the conclusion of the High Court that Peter Chaw was under some pressure when signing the commission agreement was based on verbatim extracts from the record of proceedings before the Disciplinary Committee, upon which the Disciplinary Committee had, he submitted, made no finding save that the commission was a 'gross' overcharging or an 'overcharge and unconscionable'. It followed, he submitted, that the conclusion of the High Court that Peter Chaw was under pressure in signing the commission agreement was beyond their powers and was wrong.

Their Lordships are unable to accept this argument. In a passage from the record of Peter Chaw's evidence quoted by the High Court, Peter Chaw is recorded as having stated that the appellant demanded a commission of $1.25 per sq ft as a condition of his writing to Philip Yap, and further that he urgently required the money from Philip Yap because he needed it to pay American Express. Among the Disciplinary Committee's comments on the commission agreement there is to be found the following passage:

> The stand taken by the [appellant] on the commission agreement was rather ambiguous. On the one hand he said it was 'finder's fee' to which he was entitled for securing a buyer for the property in his personal capacity and not in

his professional capacity, and on the other, he said it was initially a gift from Chaw, a voluntary payment that Chaw insisted he accept. Chaw, on the other hand, insofar as he can be believed, indicated that he had no choice but to sign the document when requested by the [appellant] as he urgently needed the [appellant's] assistance towards the end of June 1980. There is evidence that Chaw had problems then and the question of his need to change solicitor was arising at about this time.

It is plain that the High Court read the Disciplinary Committee's comments in this passage, coupled no doubt with its conclusion that the commission charged under the commission agreement was unconscionable, as a finding that Peter Chaw had been under pressure when signing the commission agreement. Their Lordships would be most reluctant to differ from the conclusion of the High Court upon such a point; but in fact they agree with the High Court's understanding of the report of the Disciplinary Committee. In any event, however, the High Court was entitled to reach this conclusion because it was an irresistible inference from the material before them. It is obvious that the Disciplinary Committee must have rejected the appellant's evidence that the grossly excessive rate of commission payable under the commission agreement was, in origin, a gift which Peter Chaw insisted that the appellant should keep. Furthermore, on the evidence of the appellant himself, Peter Chaw informed him at the time that he did not have any money as American Express was chasing him for payment. In these circumstances, it was an irresistible inference that Peter Chaw had indeed acted under pressure in signing the commission agreement; and this reinforces their conclusion that the Disciplinary Committee, expressing itself as it did, must have reached the same conclusion.

Mr Burke-Gaffney further submitted that this head of complaint was not within the terms of the formal complaint laid before the Disciplinary Committee. Their Lordships disagree, it plainly was.

Their Lordships, having considered the submissions made on the appellant's behalf by Mr Burke-Gaffney, and having taken into account certain further points advanced in his written case, are of the opinion that the High Court was fully entitled to reach the conclusion that the appellant's conduct amounted to grossly improper conduct in the discharge of his professional duty. It follows that the appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Kingsford Stacey; Taylor Joynson Garrett.*

Reported by *Yap Shao Sin*

SINGAPORE REPORTS

Chan Kin Choi v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) — CRIMINAL APPEAL NO 11 OF 1988
YONG PUNG HOW CJ, LAI KEW CHAI AND CHAO HICK TIN JJ
17 JANUARY 1991

Evidence — Statements to police — Mixed statement — Evidential status and weight of exculpatory portion of statement

Criminal Law — Murder — Sudden fight — No premeditation — Culpable homicide not amounting to murder — Penal Code (Cap 224, 1985 Ed), s 300

The appellant was charged with the murder of one Lee Mui Kee. In his statement to the police the appellant claimed that he was approached by the deceased's gang and stabbed the deceased only after a punch had been thrown at him. The statement was admitted in evidence and the appellant was convicted of murder. He appealed.

Held, allowing the appeal and convicting the accused of culpable homicide not amounting to murder:

(1) There was no rule of law that exculpatory statements in a confession used by the prosecution as part of its evidence were admissible as evidence of the truth of the contents thereof.

(2) Once the defence was called, the trial judges who were performing the role of deciders of fact must consider the whole statement, both the incriminating parts and excuses or explanations, in deciding where the truth lies.

(3) From the evidence it was plain that the appellant found himself in a dangerous situation. The deceased was at the material time joined by his gang. It was probable that the appellant had armed himself for his own protection. A fight broke out and there was no reason to disbelieve the appellant when he said the deceased started it. The court came to the conclusion that the appellant had stabbed the deceased without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. The case fell squarely within exception 4 of s 300 of the Penal Code (Cap 224, 1985 Ed).

Cases referred to

1 *PP* v *Mohamed Noor Jantan* [1979] 2 MLJ 80 (refd)
2 *Packiam* v *PP* [1972] 1 MLJ 247 (refd)
3 *Chee Chiew Heong* v *PP* [1981] 2 MLJ 287 (refd)
4 *PP* v *Lim Chor Pee* [1981] 2 MLJ i (refd)
5 *R* v *Storey and Anwar* (1968) 52 Cr App R 334 (refd)
6 *R* v *Leung Kam-kwok* (1985) 81 Cr App R 83 (refd)
7 *Haw Tua Tau* v *PP* [1981] 2 MLJ 49 (refd)
8 *R* v *Donaldson & Ors* (1976) 64 Cr App R 59 (refd)
9 *PP* v *Ong Kim Hong* (Criminal Case No 12 of 1986) (unreported) (refd)
10 *R* v *Findley Duncan* (1981) 73 Cr App R 359 (refd)
11 *Ong Kim Hong* v *PP* [1990] 3 MLJ 76 (folld)
12 *Tsang Yuk Chang* v *PP* [1990] 3 MLJ 264 (refd)
13 *R* v *Sharp* [1981] 1 All ER 65 (folld)

Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Ed) s 122(5), (6)
Penal Code (Cap 224, 1985 Ed) s 300

P Palakrishnan (*A Rajandran* with him) for the appellant.
Sowaran Singh for the respondent.

Cur Adv Vult